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March 26, 1951

Op. No. 51-91

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ARIZONA ATTORNEY GENERAL

Mr. Melvyn T. Shelley
County Attorney
Navajo County
Holbrook, Arizona

Dear Mr. Shelley:

We have your letter of March 5, 1951, wherein you ask our advice upon the following matter:

"Enclosed herewith you will find an assessment certification to Navajo County on Western Union which gives the County an assessment of 131.52 miles at \$75.00 per mile, or a total valuation of \$9,864.00 while at the same time you will note that under incorporated cities and towns they have listed besides wire and cable a valuation for the town of Holbrook for \$2,160.00 for personal property, and \$35.00 for other materials, and in addition they have listed for Winslow personal property of the value of \$13,463.00 plus \$53.00 for other materials. It seems very odd that Winslow and Holbrook would be given valuation credit on Western Union for personal property and yet not have the county receive the benefit of the personal property valuation, and it clearly appears that it would be an omitted assessment or incorrect report as to the County valuation. The evident ~~ass~~assininity of such a situation becomes even clearer when you add the assess-

ments on Western Union for Holbrook and Winslow, and get a total value of \$17,665.00 and the valuation for the entire county which has a lot more wire and cable in it, than do the two towns put together, is given a valuation on only wire and cable, \$9,864.00, and no valuation is listed for the county for personal property and other materials.

Our Assesor has gone ahead and added to the certification of the tax commission \$13,463.00 which represents the value of the personal property in Winslow. It appears that he should have also added the sum of \$2,160.00 for personal property in Holbrook in addition of the value listed above in the two towns for other materials.

* * * * *

Since the tax commission is involved in this situation, we could appreciate if you would give an opinion both for our office and the tax commission as to the rights of this county to treat the personal property of Western Union in Holbrook, and Winslow as omitted property as far as county valuation, or treat in some other manner so that the said personal property can be taxed by Navajo County. If such can not be done it would appear to circumvent the law by permitting the personal property in the two towns to go untaxed."

The authority to ascertain and assess the value of the property of telephone and telegraph companies in Arizona is by Article 12, Chapter 73, ACA 1939, placed in the State Tax Commission. The applicable provisions are:

"Values to be assessed annually.--The commission shall meet at its office annually on the first Monday in June, and ascertain and assess the value of all the property, franchises and in-

tangible values thereof, of telegraph and telephone companies in the state, at their full cash value. If any company fail or refuse to make the statement the commission shall inform itself in some other manner. At any time after the meeting and before the assessment of the property, any person interested may, on written application, appear before and be heard by the commission. After the assessment of the property and before the certification of the apportioned valuation through the several counties, the commission may, on the application of any interested person, or on its own motion, change the assessment or valuation." (Section 73-1202 ACA 1939)

"Apportionment of assessment to taxing districts.--The commission shall apportion the assessment among the several counties, cities and taxing districts through which the lines of said companies run, and transmit a statement to the proper authorities thereof, to be entered upon the assessment rolls as the taxable values, and taxed as hereinbefore prescribed for the taxation of railroad companies by such counties or taxing districts, and cities or towns with special charters." (Section 73-1204)

This last section directs attention to the provisions of Section 73-1103 detailing the procedure to be followed by the Commission and the proper authorities of each county and/or the city or town or special taxing district. A careful study of the language of this section will aid in clearing up any apparent confusion as to the tax statement here involved.

The foregoing provisions make it clear beyond question that the power vested by statute in the Tax Commission over the valuation and assessment of the property of telephone and telegraph companies within the state is entire and exclusive and is not subject to revision or review other than

in the method prescribed by law. No such right or power to revise or review such action taken by the Tax Commission is given to the taxing officials of any county, incorporated city or town or taxing district. The certification by the Commission to the several counties of the apportioned valuation of any such company is conclusive upon the county officials and controls their subsequent taxing duties. Any other conclusion would result in an absurd situation wherein the taxing officials of any county, incorporated city or taxing district could at any time substitute their own judgment for that of the Tax Commission in those matters wherein the Commission by law has exclusive or paramount jurisdiction, the consequences being the complete obliteration of any certainty or finality in the taxing processes. Particularly applicable is this statement from State v. Inspiration Consolidated Copper Company, 20 Ariz. 503, 181 Pac. 955, the case concerning the adoption by the Gila County Board of Supervisors of the assessment and valuation of producing Arizona mines made by the Tax Commission:

" * * * The county authorities made the entry under compulsion. The act of entry was an act of the state tax commission, and no other authority was answerable therefor. The county authorities were the mere agency provided by law to carry out the act of the state tax commission in such matters. * * *"

In Mohave County v. Stephens, 17 Ariz. 165, 149 Pac. 670 (overruled in one respect by State v. Inspiration Consolidated Copper Company), the court said:

"Paragraph 4387, supra, (Civil Code 1913, now Section 73-419 ACA 1939) gives the right of appeal from the decision of the board of equalization to the superior court to the taxpayer only. The county cannot appeal from their decisions. The relief from an excessive or erroneous assessment by the assessing and equalizing officer may be sought by the dissatisfied taxpayer. The relief is not open to a dissatisfied county. The county could neither appeal from the decision of the board of equalization, nor from the

verdict and judgment in the superior court. Like a dissatisfied taxpayer, it must be content to accept the remedies given it by the legislature, and, if no remedies are given it, still it cannot complain."

The rule has long been recognized in Arizona that boards of equalization act judicially when within their jurisdiction and their determinations are not open to collateral attack. United Globe Mines v. Gila County, 12 Ariz. 217, 100 Pac. 774. Also see Yuma County v. Arizona and Swansea Railroad Company, 30 Ariz. 27, 243 Pac. 907. This is, of course, true when the Tax Commission sits as the State Board of Equalization as regards property assessed by it.

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Section 73-105 ACA 1939 provides that the decision of the Tax Commission upon all matters pertaining to the assessment of property and the listing of the same shall be final except as otherwise provided by law. Provision for appeal by a taxpayer dissatisfied with the amount of his assessment as fixed by the Tax Commission or as reviewed by the State Board of Equalization is found in Section 73-110. The Commission has and exercises general and paramount supervision over the administration of the assessment and the tax laws of the state and over all county and municipal persons or officials with taxing or equalizing powers. Section 73-106 ACA 1939. This section and Section 73-107 give the Commission full authority to compel compliance with any lawful order made by the Commission or its members.

It is our opinion that the statement of assessment of the property of Western Union Telegraph Company transmitted to Navajo County by the State Tax Commission under date July 10, 1950, was not subject to amendment, alteration or addition by the officials of the county and that the action of the county assessor in adding to the certification of the Tax Commission the sum of \$13,463 or any

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amount was without authority of law. Nor can the exclusive jurisdiction of the Tax Commission be avoided by indirection through resort to Section 73-418 ACA 1939.

Very truly yours,

FRED O. WILSON
Attorney General

RICHARD C. BRINEY
Assistant Attorney General

RCB:mmw

cc: State Tax Commission
Capitol Building
Phoenix, Arizona